

TERMS OF USE (Up to date as at July 2018)

1. INTRODUCTION

- 1.1 Before accessing this website <http://www.ksholdings.co.nz>, any websites accessible from this website, <http://www.tbmroofing.co.nz>, <http://www.archtech.co.nz> and any of their related webpages (**Sites**), you are agreeing to these terms of use with Kiwi Steel Holdings Limited, Total Building Management Limited, Leading Edge Fabrication Limited and their associated group of companies which includes (but is not limited to) and any of their related companies, subsidiaries and affiliates and whether in respect of any one, some or all of them (**the Group, we or us**).
- 1.2 If you are using the Site on behalf of an organisation, you are irrevocably agreeing to these Terms for your organisation and promising to the Group that you have the authority to bind that organisation to these Terms (in which event, “you” and “your” will also refer to that organisation) unless that organisation has a separate contract in effect with us, in which event the terms of that contract will govern your use of the Sites.
- 1.3 This document, the Terms of Use (**Terms**), outlines the terms regarding your use of the Sites. These Terms are a legally binding contract between you and the Group so please read carefully. If you do not agree with these Terms, do not continue to access the Sites or use any of the Sites.
- 1.4 The Sites, include products including any applications, mobile, software, additional websites or other properties owned or operated by the Group. You acknowledge and agree that the Sites are not to be used for any purpose other than for researching into, enquiring about and/or purchasing, any of our products or services.
- 1.5 In exchange for you complying with the Terms at all times, we grant you a non-exclusive, non-transferrable worldwide licence to use and access the Sites on the terms set out herein.

2. PRIVACY

- 2.1 Through your use of the Sites, we collect certain information about you in accordance with our Privacy Policy — <http://www.pearcetool.co.nz/>. You acknowledge your use of the Sites is subject to our Privacy Policy and understand that it sets out how the Group collects, stores and uses certain information.

3. CHANGES TO THESE TERMS

- 3.1 We reserve the right to modify these Terms from time to time. If we make any changes we will post the most current version of these Terms on the Sites and revise the date at the top of this document. The currently applicable Terms can be viewed at <http://www.pearcetool.co.nz/>. The updated Terms become effective 14 days after it is published on our Sites.
- 3.2 If we make any material changes to these Terms, we will provide you with additional notice (by either adding a statement to our Sites, a notification popping up, or sending you an email notification) prior to the changes becoming effective. We encourage you to periodically review this page for the most current Terms. If you do not accept the changes, you must stop using the Sites. Continued use of the Sites after we notify you of such changes is deemed acceptance of the updated Terms.

4. CONSENT TO ELECTRONIC COMMUNICATIONS AND SOLICITATION

- 4.1 By providing your details to use the Sites, you agree to us sending you information regarding the Sites and other promotional material in accordance with the Privacy Policy — <http://www.pearcetool.co.nz/>, such as:
 - (a) notices about use of the Sites, including notices of violations of use;
 - (b) updates to the Sites and new features, products and/or services; and

- (c) promotional information and materials regarding the Group's products and/or services and any products of our affiliates, related parties or any third party in accordance with the Privacy Policy.

4.2 Notices emailed to you will be considered given and received when the email is sent. If you don't consent to receive notices (other than promotional materials) electronically, you must stop using the Sites.

5. **SITES**

5.1 There may be issues with the functionality and provision of the Sites.

5.2 We can make any changes, updates or enhancements to the Sites at any time. We may also add or remove functionalities or features, or we may suspend or stop the Sites altogether. To the extent you were able to and have uploaded data to the Sites, the Group is not responsible for any losses of data.

5.3 You agree to indemnify, pay the costs of defence, and hold us harmless from any claims, liabilities, or damages related to or arising out of data you submitted to us or posted on our Sites or through our services. This section shall supersede any provision, communication, representation, warranty, or agreement to the contrary in any of our relationships.

6. **CONFIDENTIAL INFORMATION**

6.1 By using or accessing the Sites, you acknowledge that we will provide you with information that is confidential, sensitive or should be kept secret. Such information will be provided on or through the Sites, accessed through links or downloaded by you from or through the Sites. Information that is confidential includes (but is not limited to) trade secrets, know-how; intellectual property; accounts; pricing and cost information; marketing techniques and plans; source code; technology and technical information; business or marketing plans or business processes; contract terms and prospective contract terms with prospective customers, accounts and other persons or entities with whom we may contemplate a business relationship; potential customers and purchasers; confidential information of any related entity, potential customers; products; product designs; design documentation; methods; processes; operations; product uses; product quality analysis; and other information related to us and our business that is not generally publicly known, this information should always be considered confidential to the Group (**Confidential Information**).

6.2 To the extent that any documents we provide are labelled "confidential" (or something similar), or provide information (either in writing or verbal) that is of a type that a reasonable person should understand to be confidential such information is to be treated as Confidential Information, you will treat such information as confidential.

6.3 You agree to maintain as confidential at all times, and will not at any time, directly or indirectly, disclose or permit to be disclosed to any person, use for your own purposes or use to our detriment or use to the detriment of any other party, any such Confidential Information.

6.4 You confirm that you will destroy and/or return all Confidential Information in your control and/or possession, at the Group's request. You will certify to the Group once this request has been fulfilled.

7. **DATA STORAGE**

7.1 By using and accessing the Sites, you understand and agree to the storage of any data and any other personal information in countries and territories globally. You acknowledge and agree that the Sites can be accessed globally and may be subject to laws of the relevant jurisdiction and that nothing prohibits the processing of information by the Group in any jurisdictions globally.

8. **ACCEPTABLE USE POLICY**

8.1 You agree you will not, nor will you encourage or assist others to harm the Sites or use the Sites to harm others. For example, you must not use the Sites to harm, threaten, defame or harass another

person, organisation or the Group and/or to build a similar services or websites similar to the Sites. You agree you will not:

- (a) damage, disable, burden, impair, obscure, or decompile, disassemble or remove anything from the Sites (or any network connected to such);
- (b) reverse engineer, resell or redistribute the Sites or any part thereof;
- (c) modify, reroute, or gain access to the Sites or attempt to carry out these activities otherwise than as provided for in these Terms;
- (d) use any automated process or service (such as a bot, a spider, or periodic caching of information stored by the Group) to access or use the Sites;
- (e) rent, lease, pledge or otherwise dispose of anything on the Sites;
- (f) use the Sites beyond the features allocation and amounts provided from time to time or in violation of the Acceptable Use Policy;
- (g) use the Sites to violate any law of distribute malware or malicious data; and/or
- (h) distribute, post, share information or data you don't have the right to or is illegal.

8.2 As part of our efforts to protect the Sites, or our customers, or to stop you from breaching these Terms we retain the right to block or otherwise prevent your use of the Sites, and to prevent the delivery of any type of file, email or other communication to or from the Sites.

8.3 We also reserve the right to deactivate, change and/or require you to change your user ID and any custom or vanity URLs, custom links, or vanity domains you may obtain through the Sites.

9. **SUSPENSION AND TERMINATION OF SERVICES**

9.1 We reserve the right to suspend or terminate your access to the Sites at any time in our sole discretion. You understand that if your access to the Sites is suspended or terminated, you may no longer have access to any data that is stored on the Sites or through the Sites.

10. **THE GROUP'S PROPRIETARY RIGHTS**

10.1 All content and information relating to or of the Sites, including but not limited to logo, design, text, software, intellectual property, technical drawings, configurations, graphics, other files, and their selection and arrangement and the Group Confidential Information belong to the Group, and/or its suppliers, affiliates or licensors, and you acknowledge that the Group and its affiliates own all content and information relating to or of the Sites, exclusively.

10.2 The Group or its licensors own and reserve all right, title and interest in and to the Sites and all hardware, software and other items used to provide the Sites, other than the rights we expressly grant to you to use the Sites and the Group's Confidential Information. No title to or ownership of any proprietary rights related to the Sites or the Group's Confidential Information is transferred to you pursuant to these Terms.

10.3 If you provide feedback, comments, suggestions and recommendations to the Group about the Sites, you are automatically assigning any such rights to this information to the Group.

11. **NO WARRANTY OR CONDITIONS**

11.1 To the extent permitted by law, the group and its affiliates (and associated service providers):

- (a) provide the sites on an "as is", "with all faults" and "as available" basis;

- (b) make no representations or warranties or conditions whether express or implied of any type whatsoever, including but not limited to warranty of merchantability, satisfactory quality, fitness for a particular purpose, or non- infringement in relation to the sites; and
- (c) do not guarantee that use of the sites will be uninterrupted, error- free or free of harmful components, nor that the data will be secure or not otherwise lost or damaged.

11.2 If you are dissatisfied with any portion of the sites or with these terms of use, your sole and exclusive remedy is to discontinue use of the sites.

12. INDEMNIFICATION

12.1 To the extent permitted by law, you will defend the Group against any cost, loss, damage, or other liability arising from any third party demand or claim that any data provided by you, or your use of the Sites:

- (a) infringes a registered patent, trademark, or copyright of a third party, or misappropriates a trade secret (to the extent that such misappropriation is not the result of the Group's actions); or
- (b) violates any applicable law or these Terms.

12.2 The Group will reasonably notify you of any such claim or demand that is subject to your indemnification obligation.

13. LIMITATION OF LIABILITY

13.1 To the extent permitted by law, neither the Group nor any of its affiliates, resellers, officers, employees, agents, suppliers or licensors will be liable for any direct, indirect, incidental, special, punitive, cover or consequential damages (including, without limitation, damages for lost profits, revenue, goodwill, use or data) however caused, including but not limited to contract, tort, equity, warranty, negligence or otherwise, even if the group has been advised as to the possibility of such damages. the aggregate liability of the group and its affiliates, officers, resellers, employees, agents, suppliers or licensors, relating to the sites will be limited to one hundred New Zealand dollars (NZD\$100), irrespective of whether this remedy fully compensates you for any losses or fails of its essential purpose.

13.2 Some jurisdictions do not allow the limitation of incidental, consequential or other damages. In such an event where that jurisdiction applies, this limitation will not apply to you to the extent prohibited by law.

14. DISPUTE RESOLUTION AND GOVERNING LAW

14.1 You must comply with all domestic and international export laws and regulations that apply to your use of the Sites. These laws include restrictions on destinations, end users, and end use.

14.2 These Terms, including the interpretation and rights and obligations hereunder, will be governed by and construed in accordance with the laws of New Zealand.

14.3 Any claim, dispute, or controversy (whether in contract, tort, or otherwise, whether pre-existing, present or future and including statutory, consumer protection, common law, intentional tort and equitable claims) in arising from or relating to these Terms, their interpretation or the breach, termination or validity of these Terms or the relationships which result from these terms (including, to the fullest extent permitted by applicable law, relationships with third parties who are not parties to these Terms) (**Dispute**), shall be referred to and be subject to the exclusive jurisdiction and final determination by arbitration before a single arbitrator in Auckland, New Zealand appointed the President of the New Zealand Law Society or his or her nominee at the request of any or all of the relevant parties and in accordance with the Arbitration Act 1996. You must notify the Group of any Dispute at admin@ksholdings.co.nz in writing within 30 days of the date the Dispute arises.

- 14.4 The decision of the arbitrator will be final, binding and incontestable, and it may be used as a basis for judgment in any country or region. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitration proceeding will be limited solely to the dispute or controversy between the parties.
- 14.5 You acknowledge and agree that you are waiving your rights to litigate any claim in a Court and your right to a jury trial. Nothing in this section shall prohibit the Group from seeking injunctive or other equitable relief in any court of competent jurisdiction to protect or preserve its rights in and to intellectual property or Confidential Information.
- 14.6 In any arbitration or Dispute, neither you nor any other person shall be entitled to join or consolidate claims in relation to these Terms, or arbitrate any claim as a representative or class action or in a private attorney general capacity. You acknowledge and agree that you are giving up your rights to participate in a class action or representative action with respect to any claim pursuant to or relating to these Terms.

15. FEES

- 15.1 No fees are currently charged for the Sites' use. The Group may decide to charge in the future for use of the Sites however you will be informed of any charges before this occurs.

16. GENERAL TERMS

- 16.1 These Terms apply to the maximum extent permitted by relevant law. If a court holds that we cannot enforce a part of these Terms as written, those terms will be replaced with similar terms to the extent enforceable under New Zealand law, but the rest of these Terms will remain in effect.
- 16.2 These terms and the Privacy Policy constitute the entire agreement between you and us regarding use of the Site. It supersedes any prior contract or oral or written statements regarding your use of the Sites.
- 16.3 We may assign, transfer, or otherwise dispose our rights and obligations under these terms, in whole or in part, at any time without notice. You may not assign these terms or transfer any rights to use the Sites, unless agreed by the Group in writing.
- 16.4 The failure of either of us to insist upon or enforce strict performance of any of the provisions of these Terms or to exercise any rights or remedies under these Terms will not be construed as a waiver or relinquishment to any extent of such right to assert or rely upon any such provision, right or remedy in that or any other instance rather, the same provisions will remain in full force and effect.
- 16.5 For the purposes of the Contract and Commercial Law Act 2017 (New Zealand) the agreements and undertakings set out in these Terms as given by you are given for the benefit of any and all of the Group, and are enforceable at the suit of each or any of them.